

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6649

BILL NUMBER: SB 499

NOTE PREPARED: Jan 15, 2015

BILL AMENDED:

SUBJECT: Home Rule Powers of Certain Units.

FIRST AUTHOR: Sen. Delph

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: The bill gives Indianapolis-Marion County and second class cities (units) additional home rule powers.

It provides that a unit may reject statutory restrictions otherwise applicable to the unit and adopt ordinances for governance instead of the rejected statutes. It also provides that certain statutes may not be rejected by a unit.

The bill allows a unit to file for bankruptcy under federal law.

Effective Date: July 1, 2015.

Explanation of State Expenditures: *Summary* - The bill potentially increases costs for the state if a covered unit were to declare bankruptcy or if the Department of State Revenue were to assist in the collection of a tax established by a covered unit. Any change in state cost would depend on a covered unit rejecting statutory restrictions and the covered unit's method of replacing the restriction.

Additional Information - Bankruptcy: Under the bill, a covered unit could file for, conduct, and carry out a bankruptcy under Chapter 9 of the federal bankruptcy code. If a bankruptcy were to occur, state expenses could increase for borrowing, legal costs, additional financial oversight, or if the state must undertake any functions of the bankrupt municipality. (See *Explanation of Local Expenditures* for background information on municipal bankruptcy.)

Department of Local Government Finance (DLGF): The DLGF would continue to oversee the permissible tax levies, tax rates, and budgets by adjusting the maximum levy to account for the covered unit's exercise of powers under home rule. This is expected to have no increased expenditure.

Department of State Revenue (DOR): The bill does not allow a covered unit to reject statutes concerning the assessment of real and personal property, the imposition and collection of income, real and personal property taxes, and tax appeals. The cost of collecting taxes, including creating forms, auditing for proper payment, and hearing appeals of the tax could increase for the DOR if a covered unit elects to impose a new tax. If a covered unit adopts a tax not currently collected through a state mechanism, the state may have to provide for the assessment and collection of the tax. The bill does not provide authority for the DOR to receive reimbursement for additional tax collection costs.

Explanation of State Revenues:

Explanation of Local Expenditures: Summary - If a covered unit were to reject a responsibility assigned by statute or perform the responsibility in a more efficient manner, cost savings for the covered unit could be realized. The amount of such cost savings are indeterminate and would depend on the covered unit identifying responsibilities that result in more efficient operations of the unit.

Tax Collection: If a covered unit adopts a tax not currently collected through a local mechanism, the unit may have to provide for the assessment and collection of the tax. [Under the bill, a covered unit may not impose a tax on property that is statutorily exempt from tax.]

Bankruptcy: If a covered unit enters into Chapter 9 bankruptcy proceedings, the unit could incur consulting and legal fees, as well as increased staff time to provide technical and legal documents needed. Additionally, access to credit and favorable interest rates may be limited, adding to the costs of borrowing for a unit seeking bankruptcy protection. A bankruptcy for a municipality does not necessarily cancel outstanding debt (as with other types of bankruptcy), and state law cannot be suspended by the bankruptcy court. The benefit of bankruptcy, such as restructuring debt so as to not increase taxes or decrease services, may offset some of these costs.

Additional Information - Authority to Reject: The bill adds supplemental powers to existing home rule powers for Indianapolis and second class cities, including the following powers.

- (1) Impose a special assessment, income tax, or ad valorem property tax.
- (2) Create special taxing or special service districts.
- (3) Establish quotas for alcoholic beverage permit issuance.
- (4) Establish certain funds and impose a tax for these funds.
- (5) Conduct local questions.

The bill also specifies limitations on the powers of covered units, such as the power to condition or limit civil liabilities, prescribe the law governing civil actions, or impose duties on other political subdivisions. In addition, the bill provides 28 statutory provisions that may not be rejected by a covered unit. These statutes include rules concerning courts; limits on indebtedness; election and candidate qualifications; codification and enforcement of ordinances; issuance of debt; establishment, licensing, and administration of hospitals and health care facilities; land use and planning; local government reorganization, annexation, and eminent domain; open meetings and records retention; accounting for public funds; public safety communications; county homes; powers and duties of city and county officials and removal from office; fire and building

safety; public employee pensions; and public works and public purchasing.

Bankruptcy: Municipalities, like public corporations, have the ability to file for bankruptcy protection under federal law if they meet certain criteria. Among these criteria is that the municipality has specific authority to file for bankruptcy under state law. Indiana is among 21 states that do not address Chapter 9 filings in their statutes. There are 13 states that provide specific authority in their statutes, 2 that have authority for specific types of municipal units, and 13 that have conditional authority for municipalities to file bankruptcy.

Municipal bankruptcy is rare. Since 1937 when Chapter 9 was established, there have been fewer than 500 municipal bankruptcy petitions filed. In the 12-month period ended September 2014, there were 10 cases commenced.

Chapter 9 bankruptcy law does not provide for the liquidation of municipal assets, as such action is considered to violate the 10th Amendment of the Constitution, which gives the states sovereignty over their own affairs. As a result of application of the 10th Amendment, the bankruptcy court generally is not active in managing a municipal bankruptcy case and generally is limited to approving the petition, confirming a plan of debt adjustment, and ensuring implementation of the plan. A municipality may consent to have the court exercise jurisdiction.

Explanation of Local Revenues: Summary - Under the bill, a covered unit could impose a tax and invest money in ways not currently authorized in statute, which could result in additional revenue for the covered unit. The amount of additional revenue is indeterminate and will be based on the type of tax imposed or investment undertaken, the tax base within the covered unit, and the ability of the covered unit to collect the tax.

Property Tax: Under the bill, these covered units could impose a special assessment, income tax, or property tax. The property tax could not exceed the maximum levy limits set in statute under IC 6-1.1-18.5, but the maximum levy limit could be adjusted by the DLGF to account for a covered unit's exercise of power under the bill.

Additional Information - Covered Units: Indianapolis-Marion County is considered a first class city based on population under state law. State law identifies second class cities as those having a population over 35,000 and under 599,999. However, a second class city that falls below the 35,000 population limit may remain a second class city, and a third class city that increases over the 35,000 population limit may remain a third class city. The following 25 cities are covered units under the bill.

City	2010 Population		City	2010 Population
Indianapolis	820,445		Noblesville	51,969
Ft. Wayne	253,691		Elkhart	50,949
Evansville	117,429		Greenwood	49,791
South Bend	101,168		Mishawaka	48,252
Hammond	80,830		Lawrence	46,001
Bloomington	80,405		Kokomo	45,468
Gary	80,294		Jeffersonville	44,953
Carmel	79,191		Richmond	36,812
Fishers	76,794		New Albany	36,372
Muncie	70,085		Michigan City	31,479
Lafayette	67,140		Marion	29,948
Terre Haute	60,785		East Chicago	29,698
Anderson	56,129			

State Agencies Affected: General Assembly; DLGF.

Local Agencies Affected: Indianapolis-Marion County; second class cities.

Information Sources: www.ltfp.gfoa.org/index.php?view=article&id=94&option=com;www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter9.aspx; <http://lawreview.law.lsu.edu/issues/articles/the-next-financial-hurricane-rethinking-municipal-bankruptcy-in-louisiana/>; Judicial Business 2014 accessed at <http://www.uscourts.gov/Statistics.aspx>; National Association of State Budget Officers, Municipal Bankruptcy & the Role of the States; National Association of State Auditor, Comptrollers, and Treasurers, Facts You Should Know: State and Local Bankruptcy, Municipal Bonds, and State and Local Pensions, Michael P. Taylor, Columbia Management, State Oversight a Key Factor in Assessing Local Municipality Credit Quality, January 2012,.

Fiscal Analyst: Karen Rossen, 317-234-2106.